



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/384,182	08/27/1999	MATTHEW W. KAY	108.924.116	7469

20457 7590 05/06/2003

ANTONELLI TERRY STOUT AND KRAUS
SUITE 1800
1300 NORTH SEVENTEENTH STREET
ARLINGTON, VA 22209

EXAMINER

FISCHER, ANDREW J

ART UNIT	PAPER NUMBER
----------	--------------

3627

DATE MAILED: 05/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/384,182

Applicant(s)

Kay et al

Examiner

Andrew J. Fischer

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Feb 12, 2003
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-60 is/are pending in the application.
- 4a) Of the above, claim(s) 48-60 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-40 and 42-46 is/are rejected.
- 7) ☒ Claim(s) 41 and 47 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

Art Unit: 3627

DETAILED ACTION

1. In view of the appeal brief filed on February 12, 2003, PROSECUTION IS HEREBY REOPENED. The previous Final Office Action (Paper No. 16) is hereby withdrawn. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Election/Restriction

2. The previous restriction is maintained.

Drawings

3. The appropriate changes required by the Draftsperson's review (PTO 948 in Paper No. 12) is due. The Examiner notes that the Draftsperson's review form (PTO 948) is still found in the file wrapper. The Examiner will again attempt to include this attachment in this Office Action.

Art Unit: 3627

Corrected drawings are required in reply to this Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance. If Applicants' next response does not address this issue, a notice of non-responsive will follow.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 29-47 are rejected under 35 U.S.C. 101 because claims are drawn to non-statutory subject matter. It is unclear if claim 29-47 are drawn to a system or an architecture.

Architectures are analogous to data structures and do not produce a useful, concrete, and tangible result. *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352, 1358, 50 USPQ2d 1447, 1453 (Fed. Cir. 1999); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

The Examiner notes that this is an alternative rejection only. In other words, if Applicants expressly state on the record that their claims are drawn to a system, this §101 rejection will be withdrawn.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3627

7. Claims 29-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. In claim 29, the phrase beginning with “a second server” is indefinite. Applicants begin the phrase by stating “a second server, having . . . , configured to receive . . . [etc.]. However the third clause dependent from “a second server” begins “to transmit” does not make grammatical sense. Is it ‘configured to transmit’ or ‘transmitting?’ Additionally, the 4th clause beginning “and to still further transmit” is also extremely unclear since the phrase would also be interpreted as ‘a second server and to still further transmit.’ Because of the above noted issues, the scope of this paragraph in claim 27 is unclear.

Applicants are reminded that “[a] claim must be read in accordance with the precepts of English grammar.” *In re Hyatt*, 708 F.2d 712, 714, 218 USPQ 195, 197 (Fed. Cir. 1983). Moreover, “semantic indefiniteness of claims is not rendered unobjectionable merely because it *could* have been corrected. [Emphasis in original.]” *Allen Engineering Corp. v. Bartell Industries Inc.*, 299 F.3d 1336, 1349, 63 USPQ2d 1769, 1776 (Fed. Cir. 2002) (citations and quotations omitted).

b. In claims 29-47, it is unclear if Applicants are claiming “a system” or “an architecture.” On one hand, claim 1 is evidence that Applicants intend to claim a system. However the preambles of claims 30-47 are evidence that Applicants intend the claims to be drawn to an architecture. Applicants are respectfully requested to indicate as to what their

Art Unit: 3627

claimed invention is drawn to. If Applicants expressly state on the record they their claimed invention is drawn to a system, especially claims 30-47, this §112 2nd paragraph rejection will be withdrawn.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 29-37 and 42-46 are rejected under 35 U.S.C. 102(b) as being anticipated by PowerTV Inc, White Paper titled 'Applications and Service Infrastructure' ("PowerTV"). PowerTV discloses a system with the following: a first plurality of servers (page 18, HTTP Proxy Server, the Local HTTP Server, and the email server) each configured to communicate with a first plurality of network devices (the set-top boxes) associated with a first network (the network connecting the first plurality of servers with the set top boxes), the first servers receive a first product related request from one of the first one of the first plurality of network devices (the user orders products or gets info via email and the world wide web ("WWW")); a second server (a service provider webserver such as compuserve, AOL, earthlink, or mindspring or content sever such as tucows.com) having a first database storing first product related data (to be transmitted, it is stored at least temporarily), to transmit the stored first product related data to the servers

Art Unit: 3627

(either via email or the WWW in HTML); a central server (at a e-commerce website) storing first and second product related data (price, quantity, and garment size) configured to transmit first and second product related data, to receive the first product related request and to store the received request (the e-commerce sites store the sale information for accounting purposes); the first and second product related data stored in the first database are the second product related data transmitted by the second server (i.e., the second server transmits the data from the central server, a common internet function); the first plurality of servers is configured to transmit applications (java executing on the set top boxes or the PowerTV Web Browsers, page 23) operable to receive the product related data (java or web browser data); wherein the first product related data is a request to purchase a product (e.g. purchase a sweater or information via compuserve); the first network is a video broadcast network (figure 2, page 18); the first product related data is different from the second product related data (inherent); the first product related data stored in the first and second databases correspond to a preference of a user associated with a network device (the server stores the user's information accessible with a password); the first product related request (e.g. a request for a particular broadcast video) is transmittable to one of the network devices only if the one network device is tuned to one of the multiple broadcast channels (the operator is allowed to choose the content of programming, page 3); the first product related data transmitted to the one network device is viewable in conjunction with video programming broadcast over one channel (broadcast and two way communications with, for example, on-demand video, page 12).

Art Unit: 3627

10. The Examiner notes that “system” by which Applicants’ claims are rejected is the local Power TV system in combination with the Internet.

11. After careful review of the specification and prosecution history, the Examiner is unaware of any desire—either expressly or implicitly—by Applicants to be their own lexicographer and to define a claim term to have a meaning other than its ordinary and accustom meaning. Therefore, the Examiner starts with the presumption that all claim limitations are given their ordinary and accustom meaning. See *Bell Atlantic Network Services Inc. v. Covad Communications Group Inc.*, 262 F.3d 1258, 1268, 59 USPQ2d 1865, 1870 (Fed. Cir. 2001)(“[T]here is a heavy presumption in favor of the ordinary meaning of claim language as understood by one of ordinary skill in the art.”); *CCS Fitness Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366, 62 USPQ2d 1658, 1662 (Fed. Cir. 2002) (There is a “heavy presumption that a claim term carries its ordinary and customary meaning.”). See also MPEP §2111.01 and *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).¹

In accordance with the ordinary and accustom meaning presumption, during examination the claims are interpreted with their “broadest reasonable interpretation . . .” *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).²

¹ It is the Examiner’s position that “plain meaning” and “ordinary and accustom meaning” are synonymous. See e.g. *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342, 60 USPQ2d 1851, 1854 (Fed. Cir. 2001) (“[A]ll terms in a patent claim are to be given their plain, ordinary and accustomed meaning . . .”).

² See also MPEP §2111; *In re Graves*, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995); *In re Etter*, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985) (en banc).

Art Unit: 3627

However, if Applicants disagree with the Examiner³ and have either (a) already used lexicography or (b) wish to use lexicography and therefore (under either (a) or (b)) desire a claim limitation to have a meaning other than its ordinary and accustom meaning, the Examiner respectfully requests Applicants in their next response to expressly indicate⁴ the claim limitation at issue⁵ and to show where in the specification or prosecution history the limitation is defined. Such definitions must be clearly stated in the specification or file history. *Bell Atlantic*, 262 F.3d at 1268, 59 USPQ2d at 1870, (“[I]n redefining the meaning of particular claim terms away from the ordinary meaning, the intrinsic evidence must ‘clearly set forth’ or ‘clearly redefine’ a claim

³ Note that 37 CFR § 1.111(b) states that Applicants’ reply “*must* be reduced to a writing which distinctly and specifically points out the *supposed errors* in the examiner’s action . . . [Emphasis added.]”

⁴ “Absent an *express intent* to impart a novel meaning, terms in a claim are to be given their ordinary and accustomed meaning. [Emphasis added.]” *Wenger Manufacturing Inc. v. Coating Mach. Sys., Inc.*, 239 F.3d 1225, 1232, 57 USPQ2d 1679, 1684 (Fed. Cir. 2001) (citations and quotations omitted). “In the absence of an *express intent* to impart a novel meaning to claim terms, an inventor’s claim terms take on their ordinary meaning. We indulge a heavy presumption that a claim term carries its ordinary and customary meaning. [Emphasis added.]” *Teleflex Inc. v. Ficosa North America Corp.*, 299 F.3d 1313, 1325, 63 USPQ2d 1374, 1380 (Fed. Cir. 2002) (citations and quotations omitted).

⁵ “In order to overcome this heavy presumption in favor of the ordinary meaning of claim language, it is clear that a party wishing to use statements in the written description to confine or otherwise affect a patent’s scope must, at the very least, point to a term or terms in the claim with which to draw in those statements.” *Johnson Worldwide Assocs. v. Zebco Corp.*, 175 F.3d 985, 989, 50 USPQ2d 1607, 1610 (Fed. Cir. 1999).

Art Unit: 3627

term so as to put one reasonably skilled in the art on notice that the patentee intended to so redefine the claim term”).⁶ The Examiner cautions that no new matter is allowed.

Failure by Applicants in their next response to properly traverse this issue or to be non-responsive to this issue entirely will be considered a desire by Applicants to forgo lexicography in this application and to continue having the claims interpreted with their ordinary and accustomed meaning and with their broadest reasonable interpretation.⁷ Additionally, it is the Examiner's position that above requirements are reasonable.⁸ Applicants are also cautioned that even though claim interpretation begins with this presumption, after issuance the prosecution history may further limit claim scope if Applicants disclaim or disavow a particular interpretation of the claims

⁶ See also *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582, 39 USPQ2d 1573, 1576 (Fed. Cir. 1996), (“[A] patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, *as long as* the special definition of the term is *clearly stated* in the patent specification or file history. [Emphasis added.]”); *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998) (“Such special meaning, however, must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention.”). See also MPEP §2111.01, subsection titled “Applicant May Be Own Lexicographer” and MPEP §2173.05(a) titled “New Terminology.”

⁷ See 37 C.F.R. §1.104(c)(3) which states in part: “the examiner may rely upon admissions by applicant . . . as to *any matter* affecting patentability [Emphasis added.]”

⁸ The requirements are reasonable on at least two separate and independent grounds: first, the Examiner's requirements are simply an express request for clarification of how Applicants intend their claims to be interpreted so that lexicography (or even an *attempt* at lexicography) by Applicants is not inadvertently overlooked. Second, the requirements are reasonable in view of the USPTO's goals of compact prosecution, productivity with particular emphasis on reductions in both pendency and cycle time, and other goals as outlined in the USPTO's The 21st Century Strategic Plan, February 3, 2003 available at www.uspto.gov/web/offices/com/strat21/index.htm (last accessed March 30, 2003).

Art Unit: 3627

during prosecution. *Abbott Laboratories v. TorPharm Inc.*, 300 F.3d 1367, 1372, 63 USPQ2d 1929, 1931 (Fed. Cir. 2002). Unless expressly noted otherwise by the Examiner, the preceding discussion on claim interpretation principles applies to all examined claims currently pending.

12. Under the broadest reasonable interpretation standard noted above, the Examiner maintains his interpretations. However, to the extent that the Examiner's definitions are either different from or in dispute with Applicants' definitions, the Examiner hereby adopts the following definitions as the broadest reasonable interpretation in all his claim interpretations:

a. **Architecture** "1. The physical construction or design of a computer system and its components." Computer Dictionary, 3rd Edition, Microsoft Press, Redmond, WA, 1997.⁹

b. **Broadcast** "Sent to more than one recipient. In communications, and on networks, a broadcast message is one distributed to all stations. *Id.*

c. **Channel** "2. In communications, a medium for transferring information. Depending upon its type, a communications channel can carry information (data, sound, and or video) in either analog or digital form. A communications channel can be a physical link such as a cable connecting two stations in a network, or it can consist of some electromagnetic transmission on one or more frequencies within a bandwidth in the electromagnetic spectrum, as in radio or television, or in optical, microwave, or voice-grade communication. *Id.*

⁹ See *Altiris Inc. v. Symantec Corp.*, 318 F.3d 1363, 1373, 65 USPQ2d 1865, 1872 (Fed. Cir. 2003) where the Federal Circuit used *Microsoft Press Computer Dictionary* (3d ed.) as "a technical dictionary" used to define the term "flag."

Art Unit: 3627

- d. **Configure** “: to set up for operation esp. in a particular way . . .” Merriam-Webster’s Collegiate Dictionary, 10th Edition, Merriam-Webster Inc., Springfield, M.A., 1997.
- e. **Correspond** “b: to compare closely : MATCH.” *Id.*
- f. **Database** “A file composed of records, each containing fields together with a set of operations for searching, sorting, recombining and other functions.” Computer Dictionary, *supra*.
- g. **Network** “A group of computers and associated network devices that are connected by communications facilities. A network can involve permanent connections, such as cables, or temporary connections made through telephone or other communications links. A network can be small as a local area network consisting of a few computers, printers, and other devices or it can consist of many small and large computers distributed over a vast geographical area.” *Id.*
- h. **Network computer** “A computer having the hardware and software necessary for it to be connected to a network.” *Id.*
- i. **Request** “1: the act or instance of asking for something” Merriam-Webster, *supra*.
- j. **Server**: “2. On the Internet or other network, a computer or program that responds to commands from a client.” Computer Dictionary, *supra*. **Client**: “3. On a local area network or Internet, a computer that accesses shared network resources provided by another computer (called a *server*).” *Id.* **Computer**: “Any machine that does three things: accepts

Art Unit: 3627

structured input, processes it according to prescribed rules, and produces the results as output.”

Id.

13. The Examiner interprets claim phrases such as “is one of” (e.g. claim 31) as disjunctive expressions.

14. Regarding conditional expression (e.g. such as “only if” in claim 32), Applicants are reminded that “[l]anguage that suggest or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. [Emphasis in original.]” MPEP §2106 II C.

15. The Examiner cites How Networks Work and How the Internet Works as the “objective evidence” Applicants requested. In other words, the two documents are evidence of the basic information known to those of ordinary skill in the art.

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3627

17. Claim 29-37 and 42-46, as understood by the Examiner, are alternatively rejected under 35 U.S.C. 103(a) as obvious over PowerTV.¹⁰ It is the Examiner principle position that the second plurality of first servers and a third server are inherently disclosed since the PowerTV network is connected to the Internet and Internet contains many servers.

However, if not inherent, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify PowerTV to include the duplicate servers. Such a modification is a mere duplication of parts. See MPEP §2144.04 VI. B.

18. Claims 38-40 rejected under 35 U.S.C. 103(a) as being unpatentable over PowerTV in view of Condon (U.S. 5,956,714). PowerTV discloses as discussed above and does not directly disclose using priority queues. Condon teaches using priority based queues in a plurality of servers to increase efficiency in a database.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify PowerTV as taught by Condon to include the following high and low priority queues. Such a modification would have reduced the processing time for high priority queries in the database.

Allowable Subject Matter

¹⁰ See MPEP §2112 expressly authorizing alternative 102/103 rejections when the question of inherency is present in the §102 rejection.

Art Unit: 3627

19. Claims 41 and 47 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

20. Applicants' arguments filed with their appeal brief have been fully considered but they are not persuasive.

21. Applicants argue many points. Particularly, Applicants argue that "the Examiner has failed to provide objective support or reasonable rational for the rejections, has ignored limitations, recited in the claims, and has applied art in a manner inconsistent with its teachings."¹¹ The Examiner respectfully disagrees.

22. Regarding claim 42, Applicants argue the Examiner provides no support for this conclusion that the claim is anticipated. Claim 42 recites in part, "the second database is further configured to . . . ; the central server is further configured to . . . ; the second server is further configured to . . . ; [and] the one fist server is further configured to" It is important to recognize the "configured to" language. This language is conditional or functional. The subsequent actions need never occur. For example, the Examiner's personal computer is 'configured to' do all the tasks recited in claim 42. In fact, virtually all personal computers are "configured to" do the claimed tasks. Although additional components may need to be added to a

¹¹Supplemental Appeal Brief, Paper No. 25, page 11, last paragraph.

Art Unit: 3627

particular computer, the computer remains “configured to” perform virtually any task a computer may perform.

The computers found on the Internet are also “configured to” perform all the tasks found in claim 42. The Examiner is not ignoring any claim limitations. Applicants’ arguments suggests they intend “configured to” to mean actually *performing* the tasks (i.e. the second database *storing* video program data, the second server *storing* the video program schedule, etc). Applicants’ own arguments suggest they are the ones who are in fact ignoring the “configured to” limitations—not the Examiner.

Just a chassis being manufactured in an automobile plant is configured to transport people, the prior art computers are configured to perform the claimed tasks. Just as the chassis needs additional elements such as a body, seats, an engine, and wheels to actually *transport* a person, the prior art computer needs the proper software to actually *perform* the claimed tasks. However, until the claim recites that the tasks are *actually performed*, the claims are nevertheless anticipated.

23. The same line of reasoning applies to claim 32. It is important to remember that its Applicants—and not the Examiner—that drafted the claims. Claim 32 states in part that the “first product related request is receivable from and [sic] the first product data related data is transmittable to the one network device” It is the Examiner’s position that its “receivable” and “transmittable” from virtually any other computer. Again, Applicants have not claimed that anything actually is received or transmitted—only that its receivable or transmittable. It is the

Art Unit: 3627

Examiner's position that Applicants are again ignoring the "receivable" and "transmittable" limitations.

Even conceding the above (which the Examiner does not), the claim goes on to claim that this occurs *only if* the one network device is tuned to one of the multiple broadcast channels. Again, because the phrase is disjunctive (i.e. either tuned to one of the multiple broadcast channels or *not* tuned to one of the multiple broadcast channels), either limitation will anticipate. In this case, the Examiner elects the 'not' tuned to one of the multiple broadcast channels. Therefore the claim is anticipated. Again, Applicants' comments would be more persuasive if (albeit a big if) Applicants actually claimed *tuning* to one of the broadcast channels.

24. Regarding claim 41, Applicants argue the Examiner provides no indication of even which PowerTV server is being referred to. First, if the information is transferred through a server, it is stored at that server at least temporarily. It could be virtually any server on the Internet including the second server. If the user selected a particular program, that choice is their preference. Therefore virtually any product related data selected by a user (via the request) corresponds to a preference of that user.

Conclusion

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure includes the following: Akins, III et. al. (U.S. 6,526,508 B2); Pinder et. al. (U.S.

Art Unit: 3627

6,105,134); Wilson et. al. (U.S. 6,037,981); Knudson et. al. (U.S. 6,016,141); Beyers, II et. al. (U.S. 5,724,535); Lett (U.S. 5,539,822); and Hashimoto (U.S. 5,075,771).

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew J. Fischer whose telephone number is (703) 305-0292.

AJF 5/5/03
ANDREW J. FISCHER
PATENT EXAMINER

AJF
May 5, 2003